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DISMISSAL AND CASE CLOSURE UNDER THE ENFORCEMENT PRIORITY SYSTEM

Complaint Filed: August 25, 2016. No response

reasons set forth below, the Office of General Counsel recommends that the Commission dismiss the allegations that Respondents the Committee to Elect Augustus Invictus and Brandi Hicks, in her official capacity as treasurer (collectively, the "Committee") violated the Act or Commission regulations, and find no reason to believe that candidate Augustus Sol Invictus violated the Act or Commission regulations.²

The Complaint alleges that the Committee and Augustus Sol Invictus violated the Act by failing to file 2016 April and July Quarterly Reports, and by failing to file the required pre-primary report prior to the 2016 Florida primary election held on August 30, 2016.³

The Act provides that the principal campaign committee of a candidate for the U.S. Senate is required to file disclosure reports,⁴ which include all receipts and disbursements, on a quarterly basis "no later than the 15th day after the last day of each calendar quarter," in addition to pre-election reports for "any election in which such candidate is seeking election, or nomination for election," which are due "no later than the 12th day before [the election]."⁵

² The Committee to Elect Augustus Invictus is the principal campaign committee for Augustus Sol Invictus. Augustus Sol Invictus was an unsuccessful candidate for the U.S. Senate in the 2016 Florida primary election.

³ Compl. at 3 (August 25, 2016). Additionally, on November 1, 2016, RAD sent the Committee a Request for Additional Information (RFAI) for failing to file a 2016 October Quarterly Report. There were no previous "Failure to File" RFAIs in connection with the 2016 election cycle because the candidate did not appear to have reached "candidate" status (*i.e.*, receiving or expending more than \$5,000) until the Committee filed its late 2016 April Quarterly Report on August 29, 2016, which disclosed more than \$5,000 in contributions. At that point, RAD sent the Committee an RFAI "Failure to File" when it failed to file its 2016 October Quarterly Report.

⁴ The Committee appears to have voluntarily filed quarterly reports beginning in July 2015. *See* 2015 July Quarterly Report, Comm. to Elect Augustus Invictus (July 15, 2015). Principal campaign committees filing voluntarily, prior to receiving contributions or making expenditures aggregating in excess of \$5,000, are not required to file quarterly reports. *See* 11 C.F.R. §104.1(b). As noted above, the Committee reported receiving contributions aggregating more than \$5,000 for the 2016 election cycle during the first quarter of 2016, thereby triggering mandatory reporting requirements. *See* 11 C.F.R. §104.1(a). *See also* 2016 April Quarterly Report, Comm. to Elect Augustus Invictus (Aug. 29, 2016).

⁵ 52 U.S.C. § 30104(a)(2)(A)(i), (iii). *See also* 11 C.F.R. § 104.1(a); 11 C.F.R. § 104.5(a)(1)-(2).

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Quarterly reports are considered "*late* if they are filed after their due dates but within thirty (30) days of their due dates . . . and considered to be *not filed* if they are filed after thirty (30) days of their due dates or not filed at all."⁶ Pre-election reports for primary elections are considered "*late* if they are filed after their due dates but prior to four (4) days before the primary election . . . [and] are considered to be *not filed* if they are not filed prior to four (4) days before the primary election for pre-primary reports"⁷

The Committee's 2016 April and July Quarterly Reports were each filed more than thirty days after their due dates and thus are considered to be not filed under the Commission regulations.⁸ Specifically, the 2016 April Quarterly Report, due on April 15, 2016,⁹ was filed on August 29, 2016.¹⁰ The July Quarterly Report, due on July 15, 2016, was filed on August 18, 2016.¹¹ The 2016 Pre-Primary Report, due on August 18, 2016, was filed on August 23, 2016;

⁶ 11 C.F.R. § 111.43(e)(1) (emphasis added).

⁷ 11 C.F.R. § 111.43(e)(2) (emphasis added).

⁸ See 2016 April Quarterly Report, Comm. to Elect Augustus Invictus (Aug. 29, 2016); 2016 July Quarterly Report, Comm. to Elect Augustus Invictus (Aug. 18, 2016).

⁹ The 2016 April Quarterly Report was postmarked on August 23, 2016; prior to the Commission's August 25, 2016 receipt of the Complaint. It disclosed \$2,881.58 in contributions for the quarter and \$5,648.29 for the 2016 election cycle-to-date.

¹⁰ A review of the Committee's 2016 April Quarterly Report reveals that it was signed on (or backdated to) June 11, 2016, by a different treasurer than the treasurer named in the Committee's Statement of Organization in effect at that time. Committees must report any change in the status of treasurer within ten days by filing an amended Statement of Organization. 52 U.S.C. § 30103(e); 11 C.F.R. § 102.2(a)(2). In this instance, the disclosure of the Committee's new treasurer did not occur until August 29, 2016—when the Committee filed an amended Statement of Organization. See 2016 Amended Statement of Organization, Comm. to Elect Augustus Invictus (Aug. 29, 2016).

¹¹ Because the Committee's 2016 April Quarterly Report was sent by first class mail, it is considered filed on the date of receipt if received by close of business on that day. The 2016 July Quarterly and Pre-Primary Reports were sent by certified and priority mail with delivery confirmation, respectively, and are considered filed on the date of the postmark. See 52 U.S.C. § 30104(a)(5); 11 C.F.R. § 104.5(e).

after the due date but prior to four days before the 2016 Florida primary election.¹² All three reports were on the public record prior to the Florida primary.

Although the Committee filed several disclosure reports untimely, the Commission has dismissed prior cases involving reports filed late that disclosed relatively small amounts.¹³ We also believe it is a mitigating factor that the financial disclosures were on the public record prior to the primary election. Therefore, in furtherance of the Commission's priorities relative to other matters pending on the Enforcement docket, the Office of General Counsel believes that the Commission should exercise its prosecutorial discretion and dismiss this matter.¹⁴ Nevertheless, this Office recommends that the Committee be reminded to file timely quarterly and pre-primary reports under the Act and Commission regulations. This Office also recommends that the Commission find no reason to believe that Augustus Sol Invictus violated the Act or Commission regulations because the Committee's duty to file disclosure reports resides with the treasurer, not the candidate.¹⁵ Finally, this Office recommends that the Commission approve the attached Factual and Legal Analysis and the appropriate letters, and close the file.

¹² See 2016 Pre-Primary Report, Comm. to Elect Augustus Invictus (Aug. 23, 2016). The Florida primary election was held on August 30, 2016.

¹³ In MUR 6069 (Wegner for Congress) the Commission voted 6-0 to dismiss with a cautionary letter a case involving comparable amounts where the committee filed its quarterly report 43 days late and its pre-primary report 54 days late. In MUR 6536 (Gonzales for Congress Committee) the Commission voted 6-0 to dismiss a matter involving an amended pre-primary report filed several months late, but which only concerned \$100 not previously disclosed.

¹⁴ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

¹⁵ 52 U.S.C. § 30104(a)(1).

RECOMMENDATIONS

1. Dismiss the allegations that the Committee to Elect Augustus Invictus, and Brandi Hicks, in her official capacity as treasurer, violated 52 U.S.C. § 30104(a)(2); and 11 C.F.R. § 104.5(a)(1)-(2);
2. Find no reason to believe that Augustus Sol Invictus violated the Act or Commission regulations;
3. Send a Reminder Letter to the Committee to Elect Augustus Invictus, and Brandi Hicks, in her official capacity as treasurer, for failing to timely file quarterly and pre-primary reports;
4. Approve the attached Factual and Legal Analysis and the appropriate letters; and
5. Close the file as to all Respondents.

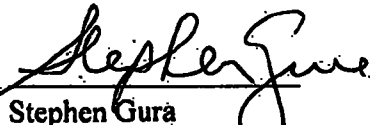
Lisa J. Stevenson
Acting General Counsel

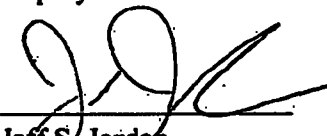
Kathleen M. Guith
Associate General Counsel

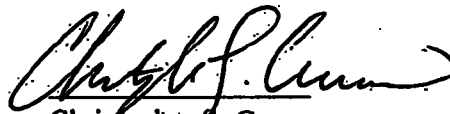
2.10.17

Date

BY:


Stephen Gura
Deputy Associate General Counsel


Jeff S. Jordan
Assistant General Counsel


Christopher S. Curran
Attorney

Attachments:

Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Augustus Sol Invictus,
Committee to Elect Augustus Invictus, MUR 7130
and Brandi Hicks, as Treasurer

I. INTRODUCTION

This matter was generated by a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act") and Commission regulations by the Committee to Elect Augustus Invictus and Brandi Hicks, in her official capacity as treasurer (collectively, the "Committee") and candidate Augustus Sol Invictus.¹ It was scored as a relatively low-rated matter under the Enforcement Priority System, a system by which the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

II. FACTUAL AND LEGAL ANALYSIS

The Complaint alleges that the Committee and Augustus Sol Invictus violated the Act by failing to file 2016 April and July Quarterly Reports, and by failing to file the required pre-primary report prior to the 2016 Florida primary election held on August 30, 2016.²

¹ The Committee to Elect Augustus Invictus is the principal campaign committee for Augustus Sol Invictus. Augustus Sol Invictus was an unsuccessful candidate for the U.S. Senate in the 2016 Florida primary election. No response has been received from the Respondents.

² Compl. at 3 (August 25, 2016). Additionally, on November 1, 2016, RAD sent the Committee a Request for Additional Information (RFAI) for failing to file a 2016 October Quarterly Report. There were no previous "Failure to File" RFAIs in connection with the 2016 election cycle because the candidate did not appear to have reached "candidate" status (*i.e.*, receiving or expending more than \$5,000) until the Committee filed its late 2016 April Quarterly Report on August 29, 2016, which disclosed more than \$5,000 in contributions. At that point, RAD sent the Committee an RFAI "Failure to File" when it failed to file its 2016 October Quarterly Report.

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2 Senate is required to file disclosure reports,³ which include all receipts and disbursements, on
3 a quarterly basis “no later than the 15th day after the last day of each calendar quarter,” in
4 addition to pre-election reports for “any election in which such candidate is seeking election,
5 or nomination for election,” which are due “no later than the 12th day before [the election].”⁴
6 Quarterly reports are considered “*late* if they are filed after their due dates but within thirty
7 (30) days of their due dates . . . and considered to be *not filed* if they are filed after thirty (30)
8 days of their due dates or not filed at all.”⁵ Pre-election reports for primary elections are
9 considered “*late* if they are filed after their due dates but prior to four (4) days before the
10 primary election . . . [and] are considered to be *not filed* if they are not filed prior to four (4)
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13 thirty days after their due dates and thus are considered to be not filed under the Commission
14 regulations.⁷ Specifically, the 2016 April Quarterly Report, due on April 15, 2016,⁸ was filed

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⁴ 52 U.S.C. § 30104(a)(2)(A)(i), (iii). *See also* 11 C.F.R. § 104.1(a); 11 C.F.R. § 104.5(a)(1)-(2).

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2 18, 2016.¹⁰ The 2016 Pre-Primary Report, due on August 18, 2016, was filed on August 23,
3 2016; after the due date but prior to four days before the 2016 Florida primary election.¹¹ All
4 three reports were on the public record prior to the Florida primary.

5 Although the Committee filed several disclosure reports untimely, the Commission
6 has dismissed prior cases involving reports filed late that disclosed relatively small
7 amounts.¹² It is also a mitigating factor that the financial disclosures were on the public
8 record prior to the primary election. Therefore, in furtherance of the Commission's
9 priorities relative to other matters pending on the Enforcement docket, the Commission

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- 1 exercises its prosecutorial discretion and dismisses the allegations against the Committee.¹³
- 2 Additionally, the Commission reminds the Committee to file timely quarterly and pre-
- 3 primary reports under 52 U.S.C. § 30104(a)(2)(A) and 11 C.F.R. § 104.5(a). The
- 4 Commission also finds no reason to believe that Augustus Sol Invictus violated the Act or
- 5 Commission regulations because the Committee's duty to file disclosure reports resides
- 6 with the treasurer, not the candidate.¹⁴

¹³ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

¹⁴ 52 U.S. C. § 30104(a)(1).